

CONDOMINIUM DECLARATION

FOR

THE AYR LOFTS

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CONDOMINIUM DECLARATION

FOR

THE AYR LOFTS

THIS CONDOMINIUM DECLARATION FOR **THE AYR LOFTS** (the "Condominium Declaration") is executed as of the ____ day of ____, ____, by **INTOWN PROPERTIES-W. 29TH AVENUE LLC**, a Colorado limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property situated in the City and County of Denver, State of Colorado, described on Exhibit A attached hereto (the "Property"); and

WHEREAS, there presently exists on the Property a building and other improvements which Declarant desires to submit to condominium ownership under this Condominium Declaration pursuant to the provisions of the Colorado Common Interest Ownership Act (the "Act"); and

WHEREAS, a copy of the Condominium Map for The Ayr Lofts will be recorded contemporaneously with the recordation of this Declaration, which Map describes the location of each Condominium Unit and Common Elements created pursuant to this Declaration; and

WHEREAS, Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, and other charges set forth herein for the purpose of protecting the value and desirability of the Property and for the purpose of furthering a plan for the improvement, sale, and common ownership of the Property, to the end that a harmonious and attractive development of the Property may be accomplished and the health, comfort, safety, convenience, and general welfare of the Declarant, all subsequent owners of portions of the Property and their respective heirs, personal representatives, successors and assigns in the Property, or any portion thereof, is promoted and safeguarded.

NOW, THEREFORE, the Declarant hereby submits the Property, together with all improvements, appurtenances and facilities thereto and now or hereafter thereon, to condominium ownership under the Act, as the same may be amended from time to time, and hereby imposes upon all of the Property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations, which shall be deemed to run with the Property and shall be a burden and a benefit to the Declarant, its heirs, personal representatives, successors, assigns and any person acquiring or owning an interest in the Property, their grantees, successors, heirs, executors, administrators, devisees, or assigns.

ARTICLE I

DEFINITIONS

1.1 Act. “Act” shall mean and refer to the Colorado Common Interest Ownership Act, codified as Article 33.3 of Title 38, Colorado Revised Statutes, as it may be amended from time to time.

1.2 Agencies. “Agencies” shall mean and collectively refer to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

1.3 Allocated Interests. “Allocated Interests” shall mean, with respect to each Condominium Unit, a fraction or percentage of the undivided interests in the Common Elements and in the common expenses of the Association allocated to such Condominium Unit in accordance with the percentages set forth in Exhibit B.

1.4 Assessment Percentage. “Assessment Percentage” shall mean and refer to the percentage of the Association expenses to be paid by the Owner(s) of each Condominium Unit as set forth in Exhibit B.

1.5 Association. “Association” shall mean and refer to The Ayr Lofts Condominium Association, a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers.

1.6 Association Maintenance. “Association Maintenance” shall mean all maintenance, repairs, and replacements for which the Association is responsible under the provisions of this Declaration.

1.7 Building. “Building” shall mean the Building located on the Property as described in the Condominium Map recorded simultaneously herewith and within which one or more Condominium Units or Common Elements are located.

1.8 Common Elements. “Common Elements” shall mean the Building and the Property, as shown on the Condominium Map, except the Condominium Units, and shall include without limitation the following:

- (a) The land comprising the Property;
- (b) All portions of the Building located on the Property as shown on the Condominium Map, except for the Condominium Units;
- (c) The tanks, pumps, motors, fans, compressors, ducts, mechanical systems, elevator, security system, and, in general, all apparatus, installations, equipment and other fixtures of the Building existing for the common use of some or all of the Owners;

(d) Any and all structural elements of the Building, stairs and stairwells, hallways, boiler and boiler room, laundry room, porches, decks, terraces, patios, recreational facilities, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, parking areas, signs and supporting structures for signs, landscaping and gardens, if any, located on the Property; and

(e) In general, all other parts of the Building existing for the common uses of some or all of the Owners and all other parts of the Project necessary or convenient to its existence, maintenance or safety or normally in common use.

1.9 Condominium Declaration. “Condominium Declaration” shall mean and refer to this Condominium Declaration for The Ayr Lofts, as it may be amended from time to time.

1.10 Condominium Map. “Condominium Map” shall mean and refer to the condominium map of the Property and which is designated as the Condominium Map of the The Ayr Lofts to be recorded in the records of the office of the Clerk and Recorder of the City and County of Denver, State of Colorado.

1.11 Condominium Unit. “Condominium Unit” shall mean and refer to a Condominium Unit, together with all fixtures and improvements therein (unless such fixtures and improvements are deemed to be Common Elements as defined herein) contained and together with the undivided interest in the Common Elements and the right to use the Limited Common Elements appurtenant to the Condominium Unit as shown on the Condominium Map.

1.12 Declarant. “Declarant” shall mean and refer to InTown Properties-W. 29th Avenue LLC, a Colorado limited liability company, its successors and assigns, provided that such successors and assigns shall first be designated by the predecessor or assigning Declarant as a Declarant for one or more purposes by a written instrument duly recorded in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado.

1.13 Declaration. “Declaration” shall mean and refer to this Condominium Declaration for The Ayr Lofts recorded in the records of the Clerk and Recorder in the City and County of Denver, State of Colorado.

1.14 First Mortgage. “First Mortgage” shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.15 First Mortgagee. “First Mortgagee” shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

1.16 Improvements. “Improvements” shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, decks, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, sprinkler pipes, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, fixtures, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, exterior air conditioning and water softener fixtures, and landscaping.

1.17 Individual Purpose Assessment. “Individual Purpose Assessment” shall mean an assessment levied against a single Condominium Unit for one or more of the reasons or purposes described in Section 7.8 below.

1.18 Limited Common Elements. “Limited Common Elements” shall mean and refer to those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include any porches, decks, terraces, and patios identified as Limited Common Elements on the Condominium Map, and the utility, heating, air conditioning and domestic hot water equipment associated with or providing service to a Condominium Unit, which Limited Common Elements shall be used in connection with the applicable Condominium Unit to the exclusion of the use thereof by the other Owners, except by invitation.

1.19 Member. “Member” shall mean and refer to each Owner of a Condominium Unit; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

1.20 Owner. “Owner” shall mean and refer to any record owner (including Declarant and including a contract seller), whether one or more persons or entities, of a fee simple title interest to any Condominium Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

1.21 Parking Space. “Parking Space” shall mean and refer to a parking space designated on the Condominium Map that shall be allocated to a Condominium Unit as a Limited Common Element. Each Parking Space, once allocated to a Condominium Unit, shall be automatically conveyed with such Condominium Unit and may not be conveyed separately from such Condominium Unit. Notwithstanding the foregoing, Parking Spaces may be reallocated between condominium units within the Project in compliance with the provisions of Section 38-33.3-208, C.R.S., as amended.

1.22 Project. “Project” shall mean and refer to the totality of the Property, the Building, the Condominium Units, and Common Elements.

1.23 Property. “Property” shall mean and refer to that certain property described on Exhibit A attached hereto.

1.24 Storage Locker. “Storage Locker” shall mean and refer to a Storage Locker designated on the Condominium Map that shall be allocated to a Condominium Unit as a Limited Common Element. Each Storage Locker, once allocated to a Condominium Unit, shall be automatically conveyed with such Condominium Unit and may not be conveyed separately from such Condominium Unit. Notwithstanding the foregoing, Storage Lockers may be reallocated between condominium units within the Project in compliance with the provisions of Section 38-33.3-208, C.R.S., as amended.

1.25 Unit. “Unit” shall mean and refer to the air space contained within the enclosed rooms occupying part of a floor or floors in the Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the demising walls, if two or more Condominium Units adjoin each other), unfinished interior surfaces of floors, unfinished interior surfaces of ceilings, and the unfinished interior

surfaces of windows and window frames, doors and door frames of the Building, and which is separately identified on the Condominium Map. The term "Unit" does not include any utility facility running through the Unit that serves more than one Condominium Unit or any other Common Element or part thereof located within the Unit. In the case of walls, floors and ceilings that are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallboard paint and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements. Units are part of Condominium Units.

ARTICLE II

DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

2.1 **Division Into Condominium Units.** The Project is hereby divided into twenty (20) separate Condominium Units, each of which shall have an undivided interest in the Common Elements appurtenant thereto in accordance with the Allocated Interests as shown on Exhibit B.

2.2 **Right to Combine or Divide Condominium Units.** No Condominium Unit may be subdivided into two or more Condominium Units without the prior written approval of the Association. If approved by the Association, two or more adjacent Condominium Units may be combined and any such combined Condominium Unit may later be divided in accordance with the provisions of this Section 2.2. Except as provided above, there may be no other division or combination of Condominium Units or relocation of boundaries between adjoining Condominium Units. A combination or division of Condominium Units shall be done in accordance with the procedures set forth in the Act. All costs incurred in connection with the combination or division shall be borne by the Owner or Owners of the affected Condominium Units, including all costs incurred by the Association in connection therewith. In connection with any such combination or division, the Owners of the Condominium Units being so combined or divided shall have the right, with the prior written approval of the Board of Directors of the Association as to a division or combination, to redesignate, as part of a Condominium Unit or as a Limited Common Element, any portion of the Common Elements or any walls, floors or other separations between the affected Condominium Units, which may be necessary or appropriate to accomplish such combination or division and the hallway(s) located between two or more Condominium Units being combined which is a Limited Common Element appurtenant to such Condominium Units may be incorporated within such combined Condominium Units (provided, however, that the Allocated Interests associated with such combined Condominium Units shall not be increased by the area of such hallway); provided, however, that the exercise of the rights granted herein shall be subject to the prior written consent of any First Mortgagee having an interest in any such combined or divided Condominium Units. Any previously combined Condominium Units that are subsequently divided, may be divided on the boundaries that are approved by the Board of Directors of the Association. If Condominium Units are combined, the undivided interest in the Common Elements appurtenant to the combined Condominium Unit shall be the sum of the undivided interests in the Condominium Units that were combined. Any previously combined Condominium Units that are later divided shall be reinstated to the undivided interests in the Common Elements that they had prior to the combination. An amendment to the Condominium Declaration and Condominium Map implementing a combination or division under this Section shall be executed and filed in accordance with the Act. Notwithstanding any other provision of this Section 2.2, Declarant shall have, as part of its development rights, the right to combine and divide Condominium Units as provided for in this Section, except that no consent will be required from the Association, the Board of Directors, or any other person for

Declarant to exercise such rights and any amendment to this Condominium Declaration or the Map that is required to implement such combination or division may be executed solely by Declarant. Declarant's development rights set forth above shall terminate on the first to occur of the seventh (7th) anniversary of the date this Condominium Declaration is recorded or the date of conveyance of the last Condominium Unit by a Declarant to the first purchaser thereof (other than a Declarant).

2.3 Inseparability. Except as provided in Section 2.2, each Condominium Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Condominium Unit. Every conveyance, transfer, devise, encumbrance or other disposition of a Condominium Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Condominium Unit, together with all appurtenant rights, interests, duties and obligations, created by law or by this Declaration.

2.4 Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment of the Condominium Unit, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section 2.4 may be pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses, and all damages that the Association incurs in connection therewith. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Condominium Unit to which that interest is allocated is void.

2.5 Declarant's Special Rights. Declarant hereby reserves the development rights and other special Declarant's rights, as such term is defined in the Act, as may be set forth in this Declaration. Such special Declarant rights include, but are not limited to, the right to: (a) add or withdraw real estate or Condominium Units to or from the Project; (b) create Condominium Units and Common Elements; (c) subdivide Condominium Units or convert Condominium Units to Common Elements; (d) maintain sales and management offices for this Project, model Condominium Units, and advertising signs; (e) use the Common Elements to make improvements to Common Elements or Condominium Units; (f) grant easements to public agencies and utility companies; and (g) the right to appoint Directors and Officers of the Association during the period of Declarant's control. Such special Declarant rights affect all of the Property that is subject to this Declaration.

ARTICLE III

CONDOMINIUM MAP

3.1 Recording. The Condominium Map and amendments thereto, if any, covering the Property shall be recorded in the Office of the Clerk and Recorder of the City and County of Denver, State of Colorado, prior to conveyance of the first Condominium Unit shown on such Condominium Map.

3.2 Content. The Condominium Map shall depict and show the following information: The name of the Project and a general schematic map of the entire Project; the legal description of the land; the location of the Condominium Units within the Building; the location of Limited Common Elements; the Condominium Unit designations; and the information required by the Act.

3.3 Amendments. Declarant hereby reserves unto itself the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend the Condominium Map in order to conform such Condominium Map to the actual location of any improvement(s) constructed, installed, or erected on the Property and to make any changes resulting from Declarant's exercise of Declarant's Special Rights.

ARTICLE IV

OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS

4.1 Rights of Ingress and Egress. Declarant and every Owner, tenant and their respective family members, guests, invitees and licensees shall have a perpetual right and easement of enjoyment in and to the Common Elements and those Limited Common Elements appurtenant to such Owner's Condominium Unit, for the purpose of entering and exiting such Owner's Condominium Unit, any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Condominium Unit; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, duties and obligations contained in this Condominium Declaration and the Condominium Map; and

(b) The right of the Association to suspend the voting rights and any and all rights of any Owner to the use of any recreational or other facilities for any period during which any Association Assessment against such Owner or against such Owner's Condominium Unit remains unpaid and, for any period of time (not to exceed sixty (60) days for each infraction) which the Association may deem to be appropriate, for such Owner's infraction, or the infraction by such Owner's tenant, any member of such Owner's or tenant's family or such Owner's or tenant's guests, licensees or invitees, of this Declaration, the Articles, Bylaws or any written rule or regulation of the Association; and

(c) The right of the Association to adopt, from time to time, rules and regulations concerning the Condominium Units, Common Elements, and/or any property owned by the Association, and any facilities located thereon, as the Association may determine is necessary or prudent; and

(d) The right of the Association to grant permits, licenses and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

4.2 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Condominium Unit.

4.3 Handicapped Parking Spaces. Certain Parking Spaces, identified on the Condominium Map as "Handicapped Parking," have been designated for use as a handicap parking space (the

“Handicap Parking Space”), for the use and benefit of permanently handicapped persons who may from time to time become Owners of Condominium Units in the Building. Any Owner who becomes an Owner of a Handicap Parking Space in connection with ownership of such Owner’s Condominium Unit shall own and hold such Handicap Parking Space subject to the following restrictions:

(a) During such time as there is no permanently handicapped person living in the Building who is the Owner of a Condominium Unit, the Owner of each Handicap Parking Space may utilize such Handicapped Parking Space as if such Parking Space were not designated as a Handicap Parking Space.

(b) In the event that a Condominium Unit is from time to time sold or otherwise transferred to a person who is permanently handicapped (“Handicapped Buyer”), and if the Parking Space conveyed to such handicapped person (the “Purchased Space”) is not a Handicap Parking Space or is not of a size that is satisfactory for use by the Handicapped Buyer, then upon application by the Handicapped Buyer to the Board of Directors of the Association, the Board shall reallocate the Parking Spaces such that (i) the Purchased Space shall be reallocated to the Owner of one of the Handicap Parking Space, if any, not already owned by a permanently handicapped person, and (ii) the Handicap Parking Space owned by the Owner to whom the Purchased Space is allocated shall be reallocated to the Handicapped Buyer. The Association is hereby designated attorney-in-fact for the Owners coupled with an interest for the purpose of executing and recording quitclaim deeds to accomplish the reallocation of the Parking Spaces as described above. If the Association reallocates a Handicap Parking Space as provided in this Section 4.3, any Mortgage encumbering such Handicap Parking Space shall be automatically released from the Handicap Parking Space being allocated to a Handicapped Buyer and shall automatically encumber the Purchased Space that is allocated to the Owner from whom the Handicap Parking Space is being reallocated, without the necessity of any consents from Mortgagee or any Owner.

(c) The selection of the Handicap Parking Space to be reallocated to the Handicapped Buyer as described above shall be made by the Board of Directors of the Association, using any method selected by the Board in its sole discretion.

(d) All expenses incurred in the preparation and filing of any documents or instruments necessary or appropriate to effectuate a reallocation of Parking Spaces as described above shall be borne by the Handicapped Buyer.

(e) The determination of whether a person is permanently handicapped within the meaning of this Section shall be made by the Board of Directors of the Association in its reasonable discretion, after considering all the facts and circumstances pertaining thereto and after receipt of such evidence (including but not limited to medical records or the written opinions of medical doctors) as the Board may reasonably request from the Handicapped Buyer.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

5.1 **Membership.** Every Owner of a Condominium Unit shall be a Member of the Association and shall remain a Member for the period of his ownership of a Condominium Unit. Each Condominium Unit shall be entitled to one vote to be exercised by the Owner or Owners thereof.

Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

5.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which shall consist of the number of members which is set forth in the Association's Articles of Incorporation, as amended from time to time ("Articles"), or By-Laws, as amended from time to time ("By-Laws"). From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board of Directors and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Condominium Units in the Project to Owners other than a Declarant; (ii) two (2) years after the last conveyance of a Condominium Unit by a Declarant in the ordinary course of business; (iii) two (2) years after Declarant's right to add Condominium Units to the Project was last exercised; or (iv) three (3) years after the first conveyance of a Condominium Unit to an Owner other than a Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the period of Declarant's control, but, in that event, Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Condominium Units to Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners of Condominium Units other than a Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Condominium Units to Owners other than a Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors shall be elected by Owners of Condominium Units other than a Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners of Condominium Units (including Declarant) shall elect the Board of Directors of at least three (3) members, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant and the Board of Directors shall elect the officers, with such Board members and officers to take office upon election and with staggered terms as provided in the By-Laws of the Association. Within sixty (60) days after the Owners of Condominium Units other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 38-33.3-303(9) of the Act.

ARTICLE VI

THE ASSOCIATION

6.1 Management and Maintenance Duties. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall:

(a) Be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements and Limited Common Elements (other than the porch, deck, patio, courtyard, terrace; glass that can be cleaned from a porch, deck, patio, courtyard or terrace; or deck or patio lighting and plumbing fixtures, all of which shall be maintained by the Owner of the Condominium Unit to which the porch, deck, patio, courtyard, or terrace is appurtenant), including, but not limited to, fixtures, equipment, utilities and other Limited Common Elements assigned or appurtenant to or providing exclusive service to individual Condominium Units (except as described

above), and any property owned by the Association, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

(b) Perform structural and exterior maintenance, repair, replacement, and modification of the Building and other site improvements and landscaping on the Property.

The expenses, costs and fees of such management, operation, maintenance, repair, replacement, and improvement by the Association, as provided in this Section 6.1, shall be part of the annual common expense assessment levied by the Association. Except for the Owners' right to veto a budget as described in Section 7.2, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. Each Owner shall afford to the Association and the other Owners, and to their agents, contractors, or employees, access through such Owner's Condominium Unit as is reasonably necessary for maintenance, repair, and replacement of the Common Elements. If Common Elements or any Condominium Unit is damaged or destroyed in connection with such access or such maintenance, repair, or replacement, the party causing or responsible for the damage or destruction is liable for the cost of prompt repair of such damage or destruction.

6.2 Owner's Maintenance Responsibilities; Owner's Negligence or Failure to Maintain; Prohibition of Certain Activities.

(a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, an Owner's tenant or by any member of an Owner's or tenant's family or by an Owner's or tenant's guests, contractors, agents, invitees or licensees or concessionaires, or as a result of any improvement constructed by or on behalf of an Owner in or upon the Common Elements, then the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such expenses, costs and fees, or any portions thereof, then the failure to so repay shall automatically become an Individual Purpose Assessment determined and levied against such Condominium Unit.

(b) Each Owner shall be responsible for maintenance, repair and replacement of the interior of his own Condominium Unit and all appliances and fixtures located therein, any improvements or additions to the Condominium Unit installed by an Owner, certain Limited Common Elements appurtenant to such Owner's Condominium Unit as described in Section 6.1(a) above, and all personal and real property comprising or located within his Condominium Unit. Each Owner shall be responsible for cleaning the inside of all glass on his Condominium Unit and the portion of the exterior of all glass that can be reached from the Owner's deck, patio, porch, courtyard or terrace. Each Owner also shall be responsible for snow removal from his deck, patio, porch, courtyard, or terrace, but salts or snow melt chemicals may not be used on decks. In the event an Owner fails to perform any cleaning, maintenance, repair or replacement which is his responsibility under this Declaration, and such failure has not been cured within thirty (30) days after written notice has been given to such Owner by the Association, the Association may perform the cleaning, maintenance, repair or replacement, and all charges incurred by the Association in connection therewith, together with an administrative fee in the amount of twenty-five percent (25%) of such cost shall be the personal obligation of the Owner and may be levied as an Individual Purpose Assessment against such Owner and his Condominium Unit. The Association and its officers, contractors and representatives shall have an easement for access to

each Condominium Unit and the Common Elements for the purpose of exercising its rights under this subparagraph (b).

(c) Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same or in violation of any rules or regulations duly adopted by the Board of Directors of the Association, or create a nuisance to any other Owners or their tenants, family members and invitees. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's tenant, or by any member of an Owner's or tenant's family, or by a guest, invitee, licensee or concessionaire or contract purchaser of any Owner or Owner's tenant. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, his tenant or the members of his or his tenant's family, his or his tenant's guests, invitees, licensees or contract purchasers, which is in violation of this Section 6.2. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard by the Board of the Association, the amounts to be indemnified shall be and constitute a Default Assessment determined and levied against the Owner's Condominium Unit.

(d) No modifications may be made to any of the Common Elements by an Owner, other than Declarant, without the prior written consent of the Board of Directors of the Association. The Board may require an Owner to submit drawings, plans, specifications, engineering reports and other information as the Board may deem to be appropriate, in connection with any request for Board approval of a modification, which approval may be denied, granted, or granted with conditions in the sole discretion of the Board.

(e) An Owner may install or modify landscaping on such Owner's patio or courtyard only with the prior written consent of the Board of Directors of the Association. No sod or spray irrigation lines may be placed within five (5) feet of the foundation of the Building. Further, any portion of the Limited Common Elements appurtenant to a first floor Condominium Unit that is not landscaped by Declarant shall be landscaped by the person acquiring the Condominium Unit from the Declarant after obtaining approval of the Board. Application for approval of a landscape plan shall be submitted to the Board within thirty (30) days after such Owner closes on the purchase of the Condominium Unit and shall be installed within sixty (60) days after approval by the Board, or such longer period of time as the Board may approved based upon considerations of weather, growing season, and drought conditions. All landscaping shall comply with the requirements of the Denver Water Department. The Board of Directors of the Association may adopt design guidelines regarding landscaping on any Limited Common Elements, which guidelines may identify landscaping materials that may be installed or placed by an Owner without first obtaining the approval of the Board of Directors of the Association.

(f) All modifications to Common Elements, including landscaping, made by an Owner, shall be maintained by the Owner at the Owner's sole cost and expense.

(g) Nothing contained herein shall authorize or permit the Association to prohibit or limit xeriscape, to prohibit the installation or use of drought-tolerant vegetative landscapes, or to require cultivated vegetation to consist exclusively or primarily of turf grass, as the terms "xeriscape" and "turf grass" are defined in Section 37-60-126(11)(b)(III) and (IV), Colorado Revised Statutes, as amended. The Association shall not require an Owner seeking approval to install xeriscape or

drought-tolerant vegetation to obtain an architect stamp, approval by an outside architect or landscape architect retained by the Association, provide an analysis of water usage under the proposed new landscape plan or a history of water usage under the Owner's current landscaping, or pay a landscape change fee. If an Owner's landscaping dies, any action by the Association to enforce the provisions of this Declaration requiring replacement of such landscaping shall be suspended during any period of water use restrictions declared by the City and County of Denver or the State of Colorado, and an Owner shall be allowed a reasonable and practical opportunity, in light of local growing seasons and practical limitations, to re-seed and revive landscaping before an Owner is required to replace landscaping with new materials.

6.3 Management Agreements and Other Contracts. The Association may have professional management of its business affairs. Any agreement for professional management of the Association's business or any other contract providing for services of a Declarant shall have a maximum term of one (1) year, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon ninety (90) days' prior written notice.

6.4 Acquiring and Disposing of Personal Property. The Association may acquire, own and hold for the use and benefit of all Owners and/or for use in performing the Association's obligations hereunder, tangible and intangible personal property and may dispose of the same by sale or otherwise. The Association may permit Owners to use such personal property when it is not being used by the Association.

6.5 Promulgation of Rules and Regulations. The Board of Directors of the Association may promulgate and enforce reasonable rules and regulations governing the use of the Condominium Units, including, without limitation, enforcement of the same by levying and collecting fines for the violation thereof, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

6.6 New Additions to Common Elements. The Association shall have the right to construct new additions to the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Condominium Units in proportion to the respective undivided interest in the Common Elements appurtenant thereto and shall be governed by this Declaration. The common expenses for any such additions to the Common Elements shall be apportioned among all Condominium Units as provided in Article VII hereof.

6.7 Conveyance or Encumbrance of Common Elements. The Association may convey or grant a security interest in portions of the Common Elements only in accordance with the provisions of Section 38-33.3-312 of the Common Interest Act and subsection 16.1(a)(iii) of this Declaration.

6.8 Contracts, Licenses, and Agreements. The Association, through its Board of Directors, shall have the right to enter into, make, perform or enforce contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners, other persons, their family members, guests, and invitees, of real property for pedestrian and vehicular access, ingress and egress to and from the Project, or any portion thereof, for vehicular parking, for on-site residential management or for recreational use; and rights-of-way and easements for the provision of cable, satellite television, or other utility service to the Property, or any portion thereof. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board of Directors of the Association, which may include provisions by which the Association

covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, or other amounts which the Board determines are necessary to secure such contracts, licenses and agreements, and any such costs and expenses shall be treated by the Association as common expenses pursuant to Article VII hereof.

6.9 Attorney-in-fact. The Association is hereby irrevocably appointed attorney-in-fact for the Owners of all Condominium Units to manage, control, and deal with the interest of such Owners in the Common Elements and in the Handicapped Parking Spaces as provided in Section 4.3 above so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Building or obsolescence as herein provided, and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards as herein provided. The Association shall, without limiting the foregoing, be attorney-in-fact for all Owners for purposes of executing, delivering and recording such instruments as are necessary to vest or to confirm in each Owner the undivided interest in the Common Elements to which each Owner is entitled under this Condominium Declaration and for any other purpose provided herein. The acceptance by any person or entity of any interest in any Condominium Unit shall constitute an appointment by the Association as an attorney-in-fact as provided above and herein.

6.10 Audit. The Association shall perform an audit of its financial records at least every two years if the Association has annual revenues or expenditures in excess of \$250,000 and the audit is requested by at least thirty-three and one-third (33 1/3) of the Owners. The Association shall perform a review of its financial records, using "Statements on Standards for Accounting and Review Services," or an audit of its financial records using generally accepted auditing standards, at least every two (2) years by a person selected by the Board of Directors of the Association. An audit shall be required only if requested by a First Mortgagee or if the Association has annual revenues or expenditures in excess of \$250,000 and the audit is requested by at least one-third (1/3) of the Owners. Copies of an audit or review shall be made available upon request to any Owner or First Mortgagee, beginning no later than thirty (30) days after its completion. The Association shall also provide an audited financial statement for the immediately preceding fiscal year to any First Mortgagee or any insurer or guarantor of such First Mortgage, within a reasonable time after written request therefor is made by any such First Mortgagee, or insurer, or guarantor of any First Mortgage; provided that if the Association has not previously received an audit for such fiscal year, the Association may require the requesting First Mortgagee, or insurer, or guarantor of a First Mortgage to pay the expense of the audit to the Association in advance.

6.11 Association Books and Records. The Association shall keep its accounting records using generally accepted accounting principles and shall maintain records of meeting minutes, board actions, committee actions, notices of meetings, and a record of all voting unit owners and their addresses. The Association shall keep at its principal office and make available to Owners, First Mortgagees of Condominium Units and insurers or guarantors of any such First Mortgage, current copies of this Declaration, the Articles of Incorporation, By-Laws, rules and regulations, books, records and financial statements of the Association, resolutions adopted by the Board or any committee of the Board, minutes of all Owners' meetings and actions for at least three years, written communications to Owners for at least three years, a list of the names and addresses of current directors and officers of the Association, the most recent annual report, and all audits and financial reviews for at least three years. The Association shall make available to prospective purchasers of Condominium Units current copies of this Declaration, and the Articles of Incorporation, By-Laws, rules and regulations, and the most recent annual audited financial statement, if such is prepared, of the Association. "Available" shall mean available for inspection, upon request that is made in good faith and for a proper purpose and for

records that are relevant to such proper purpose, during normal weekday business hours or under other reasonable circumstances. The Association may charge a fee for inspection and copying of the Association's books and records, not to exceed the Association's actual costs.

6.12 Statement of Unpaid Assessments. The Association shall provide to an Owner or its designee or to a holder of a security interest or its designee, upon written request, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Condominium Unit. The statement shall be furnished within fourteen (14) days of receipt of the request and shall be binding on the Association.

6.13. Delivery of Information to Owners after Turnover of Control. Within ninety (90) days after the first election of a Board of Directors after the end of the Declarant Control Period, and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Owners at the Association's principal place of business:

- (a) Fiscal year commencement date;
- (b) Current fiscal year operating budget;
- (c) List of the Association's current assessments (regular and special) by Unit type;
- (d) Annual financial statements, including amounts held in reserve for the previous fiscal year;
- (e) The results of any audit for the previous fiscal year;
- (f) List of all Association insurance policies, including names, limits, deductibles, additional named insureds, and expiration dates;
- (g) All By-Laws, Articles of Incorporation, and Rules and Regulations of the Association;
- (h) Board and Member meeting minutes for the previous fiscal year; and
- (i) The Association's governance policies.

Such information also may be disclosed by posting the information on the Association's website, if any, and providing notice of the Association's website to all Owners via e-mail or first-class mail, or the Association may mail or deliver such information to all of the Owners.

6.14 Information to be Provided to Owners Annually. At least annually, and within ninety (90) days after any of the following information changes, the Association shall provide written notice to all Owners, stating the following:

- (a) Name of Association;
- (b) name of designated agent or management company of the Association, if any;
- (c) valid physical address and telephone number for the Association and its agents;
- (d) name of the Association;
- (e) initial date of recording of the Declaration; and
- (f) the Reception Number or book and page number for the Declaration.

ARTICLE VII

ASSESSMENTS

7.1 Personal Obligation for Assessments. All Owners of Condominium Units, including Declarant, covenant and agree, and shall be personally obligated, to pay to the Association: (a) annual common expense assessments imposed by the Association to meet the common expense and reserve requirements of the Association; (b) special assessments, pursuant to Section 7.6 of this Declaration; and (c) other charges, fees and assessments, including without limitation Default Assessments, as defined in Section 7.10 below, as provided in this Declaration. All assessments for each Condominium Unit shall be calculated by multiplying the total annual amount of the assessments due, determined pursuant to Section 7.2 by such Condominium Unit's Assessment Percentage as shown on Exhibit B. Notwithstanding the foregoing, to the extent that it can fairly and equitably do so, the Board of the Association may identify components of the common expenses that it reasonably determines do not vary in amount based upon the comparative size of the Condominium Units ("Fixed Common Expenses"), and in connection with which use of the respective Assessment Percentages would therefore be inappropriate. Annual common expense assessments for such Fixed Common Expenses shall be allocated among the Condominium Units in an equal amount for each Condominium Unit and not in accordance with the Assessment Percentages as otherwise provided in this Section 7.1.

All Owners of each Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees, and charges attributable to their Condominium Unit. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by non-use, abandonment or leasing of its Condominium Unit. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against its Condominium Unit, as well as all charges for separately metered utilities servicing its Condominium Unit, whether such utility service is provided directly by a utility company or is metered by the Association and paid to the Association. The charges for any utilities that are not separately metered or that are used by the Association in performing Association Maintenance (including water for irrigation and any common lighting) shall be included in the annual common expense assessments levied on the Condominium Units by the Association.

7.2 Monthly Assessments; Budgets.

(a) Until the Association makes an Assessment, Declarant shall pay all common expenses. The initial Assessments shall commence not later than sixty (60) days after the first sale of a Condominium Unit to a purchaser other than a successor Declarant. After any Assessment has been made by the Association, a monthly assessment ("Monthly Assessment") shall be payable by the Owners of all Condominium Units monthly with the amount of the Monthly Assessment to be determined by the Board of Directors from time to time (but no less frequently than annually) based on a budget adopted from time to time by the Association (but no less frequently than annually).

The Board of Directors of the Association shall prepare each proposed budget to provide for the payment of all estimated expenses, costs, and fees for the duties described in Article VI, Section 1 of this Condominium Declaration and for other costs, fees, and expenses, related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration, and improvement of the Project, the Common Elements which are the responsibility of the Association, real or personal property owned by the Association, any public walkway, landscaping, and other public improvements located on the Property and adjacent to the Property that are the responsibility of the Owners to maintain, and any other obligations which may be undertaken by the Association. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of the common grounds, including the public walkway, landscaping, and other public improvements that are the responsibility of the Association or the Owners; common lighting and heating; maintenance, repair, replacement, and renovation of the Common Elements which are the responsibility of the Association; wages; charges for utilities, including water, sewer, and other utilities not separately metered for each Condominium Unit; taxes; legal and accounting fees; management fees; costs, expenses, and liabilities incurred by the Association's Board of Directors on behalf of the Owners or otherwise arising under or by reason of this Declaration, the Articles or By-Laws of the Association; the creation of reasonable reserves, working capital, and/or sinking funds; reimbursement for or payment of any operating deficit, loss, or unbudgeted expense incurred by the Association; and any and all other costs and expenses relating to the Common Elements which are the responsibility of the Association, real or personal property owned by the Association, and/or any other obligations undertaken by the Association.

(b) Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider the budget within a reasonable time after mailing or other delivery of the summary, as provided under the Bylaws of the Association. Notice of such meeting shall be provided as set forth in the Bylaws of the Association. Unless at that meeting at least eighty percent (80%) of all Owners veto the budget, the budget adopted by the Board of Directors is deemed to have been approved by the Owners, whether or not a quorum is present. In the event the proposed budget is vetoed by the required percentage of all Owners, the periodic budget last adopted by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the required percentage of the Owners.

(c) If the Board of Directors reasonably determines from time to time that a previously approved Budget (or Budget amendment) will not be sufficient to pay for all of the estimated expenses, costs and fees to be incurred during the Budget year which are to be covered by the Budget, including the need to cover anticipated operating deficits and/or unbudgeted costs and expenses, the Board may adopt an amendment to the Budget and submit the amended Budget to the Owners for veto in accordance with the procedures set forth above. If the Budget amendment is vetoed by the Owners, the previously approved Budget (or amendment thereto) shall remain in full force and effect.

7.3 Reserves. The Association shall establish a reserve fund that, in the reasonable judgment of the Board of Directors, is adequate for replacement of improvements to the Common Elements and Limited Common Elements and payment of insurance deductibles. Such reserve fund shall be funded through the monthly payments of the annual common expense assessments.

7.4 Date of Commencement of Annual Common Expense Assessments. The initial annual common expense assessment shall commence not later than sixty (60) days after the first sale of a Condominium Unit to a purchaser other than a successor Declarant. The second and each subsequent annual common expense assessment period shall correspond with the fiscal year of the Association. The annual common expense assessments initially shall be made due and payable monthly, but the Board may decide to change such dates in its discretion, provided that the first annual common expense assessment shall be adjusted according to the number of months in the first annual common expense assessment year. Any Owner purchasing a Condominium Unit between installment due dates shall pay a pro rata share of the last installment due.

7.5 Rate of Assessment. Both annual common expense and special assessments shall be set against all Condominium Units sufficient to meet the Association's advance budget, in accordance with the principle set forth in Section 7.1 hereof. If there is any surplus remaining at the end of a budget year, the Association shall be entitled to retain such surplus to use for purposes permitted under this Declaration.

7.6 Special Assessments. In addition to the assessments authorized above, the Association may at any time, and from time to time, determine, levy, and assess a special assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any fees and expenses of any construction, reconstruction, repair, demolition, replacement, or maintenance that the Association is responsible for hereunder, specifically including without limitation the Common Elements, any fixtures and personal property related thereto; provided, however, that the Board of Directors shall first obtain the consent of two-thirds (2/3) of the membership present at a meeting duly called for that purpose. Each such special assessment shall be set against each Condominium Unit in accordance with the provisions set forth in Section 7.1 hereof and shall be due and payable as determined by the Association's Board of Directors. Prior to the conveyance by Declarant of the last Condominium Unit to the first Owner thereof (other than a successor Declarant) any special assessment for Capital Improvements shall also require the written approval of Declarant and any Agencies which have insured or purchased a First Mortgage if such approval is requested by the Agencies. "Capital Improvements," as used in the preceding sentence, shall mean the construction, erection, or installation of substantial structure(s) or other substantial improvements on the Property, but shall not include the construction, reconstruction, erection, installation, maintenance, repair, or replacement of improvements presently located on the Property or which may hereafter be constructed, erected or installed on the Property by Declarant in its development of the Project. Notice in writing setting forth the amount of such special assessment per Condominium Unit and the due date for payment thereof shall be given to the Owners not less than thirty (30) days prior to such due date.

7.7 Notice of Quorum for Action Authorized Under Section 7.6. Written notice of any meeting called for the purpose of voting on a special assessment pursuant to Section 7.6 shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the meeting, the presence of members entitled to cast at least twenty-five percent (25%) of the membership votes shall constitute a quorum.

7.8 Individual Purpose Assessments. Individual Purpose Assessments may be assessed by the Board against individual Condominium Units for any matters applicable solely to such Condominium Units. Such Individual Purpose Assessments may include, but shall not be limited

to, expenses for maintaining, repairing, replacing, or improving the Parking Space owned by the Owner of such Condominium Unit or the Limited Common Elements allocated to such Condominium Unit; maintaining, repairing or replacing any utility service lines, equipment or fixtures that serve only that Condominium Unit; insurance on certain elements of a Condominium Unit determined by the Board pursuant to Section 8.7 below; and any costs, expenses, fees and other charges incurred by the Association to repair any damage to Common Elements or other Condominium Units caused by the Owner of such Condominium Unit, or his tenants, family members, guests, invitees and contractors. The amount of any Individual Purpose Assessment assessed against a Condominium Unit shall be due and payable as determined by the Board of Directors of the Association provided that notice of the amount of and due date(s) for payment of such Individual Purpose Assessment is given to the Owner of the Condominium Unit subject to such Individual Purpose Assessment at least thirty days prior to the due date. The Owner of the Condominium Unit subject to an Individual Purpose Assessment shall be given the opportunity to be heard by the Association's Board of Directors prior to such Individual Purpose Assessment being levied.

7.9 Lien for Assessments.

(a) Under the Act and subject to its limitations, the Association has a statutory lien on a Condominium Unit for any Assessments levied against that Condominium Unit and for fines imposed against its Owner from the time each Assessment or fine becomes due, but not on the Project as a whole. The statutory lien that arises in connection with the failure to pay any assessments against a Condominium Unit or in connection with any fees, charges, late charges, attorneys fees, fines and interest affecting the Owner of a Condominium Unit shall also encumber the Parking Space and Storage Locker owned by the Owner of such Condominium Unit. In addition, fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to this Condominium Declaration or the Act are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

(b) The statutory lien for Assessments is prior to all other liens and encumbrances on a Condominium Unit except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Condominium Unit.

(c) Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association pursuant to Section 7.2 above which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien of an action or non-judicial foreclosure either to enforce or extinguish the statutory lien.

(d) The recording of this Condominium Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or Assessment is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner and his Condominium Unit as a Default Assessment.

7.10 Effect of Non-Payment of Assessments; Default Assessments. Any assessment, charge or fee provided for in this Declaration, including, without limitation, any Monthly Assessment, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof (referred to herein as a "Default Assessment"), shall bear interest at the rate of eighteen percent (18%) per annum from the due date, or at such lesser rate as may be set by the Board of Directors of the Association from time to time, and the Association may assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Condominium Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. In the event that any such assessment, charge or fee, or monthly or other installment thereof, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or cross-claim for such relief in any action) against any Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Condominium Unit, then all unpaid assessments, charges and fees, and all unpaid monthly or other installments thereof, any and all late charges and accrued interest under this Section 7.10, the Association's costs, expenses and reasonable attorneys' fees incurred for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Condominium Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Condominium Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.

7.11 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Condominium Declaration to the contrary, the sale or transfer of any Condominium Unit shall not affect the lien for Assessments, charges, costs, or fees levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Association Assessments, but not the personal obligation of the Owner for the payment of Assessments, which became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, except to the extent the lien of the Association has priority over the First Mortgage under Section 7.9; provided, however, that any such Assessments, charges, costs, or fees which are extinguished as provided herein may be reallocated and assessed to all Condominium Units. A First Mortgagee may be personally liable for any unpaid Assessments, charges, costs, or fees, or portion thereof, accruing against a Condominium Unit prior to the time a First Mortgagee takes title to such Condominium Unit, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 7.9 above. No sale, transfer, foreclosure, or any proceeding in lieu thereof, shall relieve any Owner from liability for any Assessments, charges, costs, or fees, or any portion thereof, accrued during the period of such Owner's ownership of the Condominium Unit. No Owner shall have personal

liability for Assessments assessed with respect to a Condominium Unit that become due prior to the time he acquired title to such Condominium Unit.

7.12 Working Capital Fund. The Association or Declarant shall require the first Owner of each Condominium Unit (other than a Declarant), to make at the time of purchase, a non-refundable contribution to the Association in an amount equal to two (2) times the Monthly Assessment against that Condominium Unit in effect or proposed at the closing thereof. At the time Declarant's control of the Association terminates, the Declarant will transfer control of such funds to the Association (if not transferred earlier). Amounts paid into the working capital fund shall not be considered as advance payments of regular Assessments. Funds in the working capital account shall be segregated with other such working capital funds for the use and benefit of the Association, including without limitation to meet unforeseen expenditures or to purchase additional equipment, property, or services. Such contribution to working capital funds shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the transfer of his Condominium Unit, an Owner (including a Declarant if he previously paid working capital funds for the sold Condominium Unit) shall be entitled to a credit from his transferee (but not from the Association) for the unused portion of the contribution to the working capital fund. A Declarant shall not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits. No working capital contribution shall be made upon the transfer of any Parking Spaces.

7.13 Certificate of Status of Assessments. Within seven (7) days after receipt of a written request from an Owner, prospective purchaser, First Mortgagee, prospective First Mortgagee, junior mortgagee or prospective junior mortgagee of the subject Condominium Unit, and upon payment of a reasonable fee, as set by the Association or its management company, the Association, through its Board of Directors or by its managing agent, shall issue a written statement setting forth the amount of any unpaid Association assessments, charges, fees, or portions thereof, if any, with respect to the subject Condominium Unit, the amount of the current monthly common expense assessment and the date that such assessment becomes due, the due date of any special assessment then existing against the Condominium Unit, the amount of any credit for any advance payments of assessments, for prepaid items (such as insurance premiums), and for funds remaining in the working capital fund to which the Owner would be entitled from its transferee upon the sale of the subject Condominium Unit, and any other information deemed appropriate by the Association. Said written statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

7.14 First Mortgagees May Pay Assessments and Cure Defaults. If any Assessment on a Condominium Unit shall not be paid by the Owner thereof within thirty (30) days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles or By-Laws of the Association, shall not be cured within thirty (30) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such Assessment, together with any other amounts secured by the Association's lien created by this Article VII, and may (but shall not be required to) cure any such default.

7.15 Liens. Declarant hereby states that it is possible that additional liens other than mechanic's liens, assessment liens, or tax liens may be obtained against the Property, including the Common Elements.

ARTICLE VIII

INSURANCE

8.1 Insurance on Common Elements. Commencing not later than the time of the first conveyance of a Condominium Unit to a person other than a Declarant, the Association shall maintain the following types of insurance for the benefit of the Owners to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. The Association may not include certain insurance provisions set forth in this Article VIII based upon its review of the factors set forth in the preceding sentence. Notwithstanding any of the specific insurance requirements contained in this Article VIII, the Association may also consider, in determining the types and amounts of insurance it needs to obtain, the then-existing requirements of the Agencies with respect to their insurance, guaranty, or purchase of First Mortgages. Additional provisions governing the use of insurance proceeds are set forth in Article XIII of this Declaration. As required under the provisions of Section 10-4-110.8(5), C.R.S., as amended, all insurance policies obtained by the Association shall provide that an Owner may file a claim under such policies to the same extent, and with the same effect, as if the Owner were an additional named insured.

(a) A policy of property and/or hazard insurance covering all insurable improvements located within the Project (including the Common Elements and the Condominium Units; the finished interior surfaces of the walls, floors and ceilings in the Condominium Units including paint, drywall, floor coverings, carpeting and wood floors; original installation cabinets, counters, acoustic isolation boards and appliances; and any fixtures, equipment or other property within all of the Condominium Units that are encumbered by a First Mortgage on any Condominium Unit that is held, guaranteed or insured by any of the Agencies, but excluding any other equipment, furniture, betterments and additions to the Condominium Unit installed by the Owner other than the Declarant, and personal property furnished or installed by an Owner) except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement", an "Agreed Amount Endorsement" (if obtainable), a "Construction Code Endorsement" (if obtainable) and, if the Building has central heating or air conditioning, a "Steam Boiler and Machinery Coverage Endorsement" with minimum coverage per accident for the Building to equal the lesser of \$2 million or the insurable value of the Project. Such endorsements may be covered by what is referred to as a "Special Condominium Endorsement." The Association will also purchase endorsements, and/or coverage on personal property owned by the Association, including fixtures and building service equipment, furnishings, common personal property, and supplies. Such insurance shall afford protection against at least the following:

(i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard “all risk” endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering the Project insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Project, legal liability arising out of lawsuits related to employment contracts of the Association and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, comprehensive automobile liability insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen’s compensation insurance for employees of the Association and such other risks as may customarily be required by private institutional mortgage investors with respect to condominium projects similar in construction, location and use. Such liability insurance shall insure the Board, the Association, any management agent and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner and, if applicable, member of the Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

(c) At the discretion of the Board, a policy providing employee dishonesty coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the greater of (i) the estimated maximum of funds, including reserves, in the custody of the Association at any given time and (ii) three (3) months’ aggregate assessments on all Condominium Units plus reserves. Such coverage shall meet the following requirements:

(i) all such coverage shall name the Association as an obligee;

(ii) such coverage shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression;

(iii) such fidelity coverage or bonds must include a provision that calls for thirty (30) days’ prior written notice to the Association (or insurance trustee, if applicable) before the fidelity coverage or bonds can be cancelled or substantially modified for any reason. Such notice must also be provided to each servicer of an Agency-owned or Agency-securitized First Mortgage;

(iv) to allow a reduction in the cost of required fidelity coverage or bonds, the Association may implement any financial controls permitted by an Agency then insuring, guaranteeing or purchasing First Mortgages, either by resolution of the Board, amendment to the Association By-Laws or as otherwise may be approved by the applicable Agency(ies).

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association shall require the managing agent to purchase at its own expense, a policy of employee dishonesty coverage which fully complies with the provisions of this Paragraph (c), unless the Association names such managing agent as an insured employee under a policy of fidelity insurance or fidelity bonds in accordance with this Paragraph (c).

(d) A policy providing personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

(e) Workmens' compensation, employer's liability and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(f) If the Project improvements are located in an area identified by the Federal Emergency Management Agency as having special flood hazards, or designated as a Special Flood Hazard Area on a relevant Flood Insurance Rate Map, and flood insurance coverage is then available under the National Flood Insurance Administration Program ("NFIAP"), a "master" or "blanket" policy of flood insurance on the Building and any other property and contents of the Building covered by the required form of policy (herein "insurable property") in an amount deemed appropriate, but not less than the lesser of:

(i) the maximum coverage available under the NFIAP for the Building and other insurable property within any portion of the Project located within a designated flood hazard area; or

(ii) one hundred percent (100%) of the insurable value of the Building, including machinery and equipment that are part of the Building and other insurable property and contents of the Project located within a designated flood hazard area.

Any policy of flood insurance carried by the Association pursuant to this subsection 8.1(f) shall be in a form which meets the criteria and maximum coverage set forth in the most current guidelines on the subject issued by the Federal Flood Insurance Administration. The maximum deductible amount for policies covering the Common Elements and the Building shall be the lesser of \$5,000 or one percent (1%) of the policy's face amount.

(g) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available.

8.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners and First Mortgagees, and each Owner shall be an insured person under such policies with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. The policy or policies shall recognize any applicable Insurance Trust Agreement and shall contain a standard non-contributory First Mortgagee's clause in favor of each First Mortgagee and a provision that it cannot be

cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured, to each First Mortgagee, and to each Agency which guarantees or insures a First Mortgage on any Condominium Unit. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees under the Declaration, upon request. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of the Association, an Owner or an Owner's tenant. The policies shall also contain a waiver by the insurer of any right to claim by way of subrogation against the Owners, each person or entity who is a Declarant, the Association, and their respective officers, directors and members and any of such parties' respective families, agents, employees or tenants. The liability insurance policy provided for under Section 8.1(b) shall insure the Board of Directors, the Association, any management agent and their respective employees, agents and all persons acting as agents. Each person or entity who is a Declarant shall be included as an additional insured in its capacity as an Owner and, if applicable, a member of the Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

8.3 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of \$10,000.00 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be a common expense shared by all of the Owners. Notwithstanding the foregoing, after affording an Owner a reasonable opportunity to be heard, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner or Owners, and assess such loss as a Default Assessment against such negligent Owner or Owners and their Condominium Unit, in such proportion as the Association in its reasonable discretion may determine, and subject to all provisions of this Condominium Declaration applicable to such Assessments.

8.4 Insurance Trustee. The Board of Directors shall have authority to authorize an insurance trustee to assist and consult with it and/or to act as its agent and attorney-in-fact for one or more of the following purposes: to purchase and maintain the insurance required under this Declaration, to negotiate and compromise settlement of losses under any insurance; and to collect the proceeds from any insurance, hold such proceeds in trust for the Owners and their First Mortgagees as their interest may appear and dispose of such proceeds as provided in Article XIII of this Condominium Declaration and the Common Interest Act. The Association and any insurance trustee designated by the Board of Directors shall have exclusive authority as agent and attorney-in-fact for the Owners to purchase and maintain all insurance required under this Article, to negotiate, settle and compromise any claims under such insurance, to receive all proceeds from such insurance and apply them as provided under this Declaration, to execute releases of liability in connection with the negotiation and settlement of claims, and to execute all documents and perform all acts that may be necessary or desirable to carry out the Association's and insurance trustee's rights and duties under this Declaration.

8.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered

by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of such Owner and for reimbursement to the Association for the deductible under the Association's insurance policy; provided that if such amount(s) are not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total of such amount(s), from time to time, then the failure to so repay shall automatically become a Default Assessment determined and levied against such Condominium Unit and Owner.

8.6 Acceptable Insurance Companies. Any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports (or a comparable rating by any successor or generally accepted substitute for Best's) of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

8.7 Insurance to be Maintained by Owners. Insurance coverage on furniture, furnishings, draperies, curtains, blinds, improvements and betterments installed by or constructed by an Owner other than the Declarant, and other items of personal property belonging to an Owner within a Condominium Unit and appurtenant Limited Common Elements, unless covered by the Association's insurance policy, and public liability coverage within each Condominium Unit and appurtenant Limited Common Elements, shall be the sole and direct responsibility of the Owner(s) thereof, and the Association, its Board of Directors and/or the managing agent of the Association shall have no responsibility therefor; provided, however, that the Board of Directors of the Association may elect to include any such coverage in any Association policy and any costs of such coverage not allocable to the Owners on a uniform basis shall be assessed as an Individual Purpose Assessment. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such additional insurance carried by any Owner.

8.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such appraisal upon request.

8.9 Notice of Cancellation. If any insurance that the Association is required to maintain under this Article VIII is not reasonably available or is cancelled or not renewed without a

replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by U.S. Mail to all Owners.

8.10 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of any insurance on the Project, or any part thereof, or increase in the rate of any insurance on the Project, or any part thereof, over such rates that the Association, but for such activity, would pay, without the prior written approval of the Association. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by such Owner, the members of the Owner's family, guests, invitees or attendants, which is in violation of this Section 8.10. At its own initiative or upon the written request of any Owner (and, if the Association determines that further action by it is proper), then, after affording an Owner a reasonable opportunity to be heard, the Association shall enforce the resulting indemnified amount as a Default Assessment determined and levied against the Owner's Condominium Unit.

ARTICLE IX

CONVEYANCES AND TAXATION OF CONDOMINIUM UNITS

9.1 Contracts Entered into Prior to Recording of Condominium Map and Declaration. A contract or other agreement for the sale of a Condominium Unit entered into prior to the filing for record of the Condominium Map and/or this Condominium Declaration in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, may legally describe such Condominium Unit in the manner set forth in Section 9.2 hereof and may indicate that the Condominium Map and/or this Condominium Declaration are to be recorded. Upon recordation of the Condominium Map and this Condominium Declaration in the City and County of Denver, State of Colorado, such description shall be conclusively presumed to describe the corresponding Condominium Unit shown on the Condominium Map and such Condominium Unit shall be subject in all respects to this Declaration.

9.2 Contracts Entered into Subsequent to Recording of Condominium Map and Declaration. Subsequent to the recording of the Condominium Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit may legally describe that Condominium Unit as follows:

Condominium Unit ____ The Ayr Lofts, together with Parking Spaces ____ and Storage Locker ____, according to the Condominium Map thereof, recorded on _____, ____, with Reception No. _____, in the records of the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, and as defined and described in the Condominium Declaration for The Ayr Lofts recorded on _____, ____, with Reception No. _____, in said records.

9.3 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit which legally describes said Condominium Unit in the manner set forth in Section 9.2 hereof shall be good and sufficient for all

purposes to sell, convey, transfer, encumber or otherwise affect the Condominium Unit, including the undivided interest in the Common Elements appurtenant thereto and all other appurtenant properties and property rights, and incorporate all of the rights, limitations and burdens incident to ownership of a Condominium Unit as described in this Condominium Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Condominium Unit and the use of all the General Common Elements as well as all of the Limited Common Elements appurtenant to said Condominium Unit, all as more fully provided in this Declaration.

9.4 Taxation. Each Condominium Unit shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Common Interest Act. For the purpose of such assessments, the valuation of the General Common Elements shall not be separately assessed, but shall be apportioned among the Condominium Units in proportion to the undivided interest in Common Elements appurtenant thereto and, to the extent feasible, the valuation of the Limited Common Elements shall be apportioned to the individual Condominium Unit or Condominium Units to which such Limited Common Elements are allocated. The Common Elements and other property owned by the Association, if any, shall be appraised and valued pursuant to the provisions of Section 38-33.3-105 of the Act, as the same may be amended or modified. The Association shall furnish to the Tax Assessor of the City and County of Denver, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

ARTICLE X

MECHANIC'S AND OTHER LIENS

10.1 Mechanic's and Other Liens. No labor performed or materials furnished for use and incorporated in any Condominium Unit with the consent or at the request of the Owner thereof, its agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Condominium Unit of any other Owner, the Common Elements or any part thereof, for labor performed or for materials furnished in work on the first Owner's Condominium Unit.

10.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) or other liens are not disputed claims with a reasonable basis for such dispute, the Association shall enforce the indemnity provided for in Section 10.1 hereof by collecting from the Owner of the Condominium Unit on which the labor was performed or materials or utilities furnished, the amount necessary to discharge any such mechanic's lien or pay such utility charges, including all costs and reasonable attorneys' fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Condominium Unit on which the labor was performed or materials or utilities furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof,

from time to time, of the amount to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 10.2 and such amount to be indemnified shall automatically become a lien against such Condominium Unit, and the Association may proceed to foreclose such lien in accordance with the procedures set forth in Section 7.9 hereof.

10.3 Effect of Part Payment. In the event a lien attributable to labor performed and/or materials furnished on the Project, or any portion thereof, is effected against two or more Condominium Units, the Owner(s) of any of the affected Condominium Units may pay to the lienholder the amount of the lien attributable to such Owner's Condominium Unit and the lienholder shall release such Condominium Unit from the lien. The amount required to be paid by any such Owners in order to obtain release of their Condominium Unit from any such lien shall be equal to the quotient of (i) the amount of the lien, divided by (ii) the total number of Condominium Units affected by the lien. Partial payment and release of any such lien with respect to any Condominium Unit(s) shall not prevent the lienholder from enforcing its rights against any Condominium Unit for which payment has not been received.

ARTICLE XI

RESTRICTIVE COVENANTS

11.1 Residential Use. Condominium Units shall be used for residential purposes only, including uses related to the convenience and enjoyment of such residential use; provided that home offices (including the providing of lessons to individuals) will be permitted in each Condominium Unit if the same comply with the following: (i) no chattels, goods, wares or merchandise shall be commercially created, displayed, exchanged, stored or sold; (ii) the office shall be operated entirely within the Condominium Unit; (iii) the office shall be operated by a person whose principal residence is in the Condominium Unit; (iv) there shall be no more than one person employed by or associated with the office who does not maintain his principal residence in the Condominium Unit; (v) there shall be no separate entrance to the office from the outside of the Condominium Unit; (vi) the office(s) shall not utilize more than 300 square feet of floor area; (vii) there shall be no external evidence of the operation of an office; (viii) there shall be no signs used in connection with the office except such signs (if any) that the Association may approve in writing; and (ix) the office shall not violate applicable zoning. No structures of a temporary character, trailer, shack, barn, or other outbuilding shall be used, kept, or stored on any portion of the Project at any time, either temporarily or permanently.

11.2 Household Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept, or boarded in or on the Project, except that domesticated dogs, cats, birds, fish, or other common household pets may be kept in any Condominium Unit, subject to the provisions of this Section 11.2, subject to all governmental ordinances, laws and regulations, subject to rules and regulations that may be adopted by the Board of Directors of the Association with regard to pets, and provided that no pets may be kept for commercial purposes or be permitted to become a nuisance, as determined by the Board of the Association. Such rules and regulations may, among other things, establish limitations on the types of pets that are permitted, the number and weight of pets and restrictions on leaving pets on patios, balconies, terraces, and porches. The number of pets that may be kept in each Condominium Unit is limited to two dogs and two cats, but not more than three cats and dogs in the aggregate, unless the Board of Director of the Association approves a greater number after an application for such approval is submitted to the Board of Directors. The

foregoing restriction does not apply to fish that are otherwise permitted pursuant to this Section 11.2. The Association shall have and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets, if permitted by the Board, are being kept in such a number or in such manner as to be unreasonable or to create a nuisance to other Owners, or that an Owner is otherwise in violation of this Section 11.2, and to take such action or actions as it deems reasonably necessary to correct the same, including prohibiting the pet from being kept in a Condominium Unit. An Owner's license to keep household pets granted under this Section is revocable by the Board and shall be coupled with the responsibility to pay for any damage to Common Elements or Condominium Units owned by others caused by such Owner's pet, as well as any costs incurred by the Association as a result of such pet, and any such amounts shall be and constitute a Default Assessment subject to and enforceable by the Association in accordance with this Declaration. Each Owner is responsible for cleaning up his pet's waste from the Common Elements and adjacent public ways and to comply at all times with applicable ordinances, laws, and regulations governing pets. No animals shall be allowed to be tied or chained to any balconies, patios, terraces, porches, or other parts of the Project, and any animals that are so tied or chained may be removed by the Association or its agents. Pets shall not be left on decks, porches, patios, or terraces unattended at any time.

11.3 No Obstruction or Structural Modifications. There shall be no obstruction of any easement provided for herein and nothing shall be kept or stored outside of a Condominium Unit without the prior written approval of the Board of Directors of the Association or as permitted in this Declaration. Nothing shall be altered, constructed, or removed from the exterior or structural portions of the Building without the prior written approval of the Board of Directors of the Association. There shall be no penetrations of any concrete floor unless approved by the Board of Directors and certified by a structural engineer. Sound attenuation elements in the demising walls and floor/ceiling assemblies installed in the Building may not be changed or altered in any manner. There shall be no change to drainage from patios, decks, balconies, and similar building elements or any other interference with such drainage without the prior written approval of the Board of Directors of the Association.

11.4 Use of Common Elements. Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association, except that outdoor furniture, art objects, outdoor barbecue equipment that complies with Fire Department requirements, and plants that are in good condition may be placed on a deck, terrace, courtyard, or patio without the consent of the Board of Directors. Notwithstanding the foregoing, the Board of Directors may establish a list of heavy objects, such as heavy planters, hot tubs, etc., that may not be placed on a deck, terrace, courtyard or patio without first submitting to the Board of Directors an opinion of a structural engineer that such item will not overload the bearing capacity of that portion of the Building and the Board of Directors, in its sole discretion, approves such item and its location. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Board of Directors of the Association. Such approval may be conditioned upon the Owner who requests the approval to submit plans for the alteration to the Board of the Association for approval, obtaining insurance as required by the Board of the Association and posting adequate surety. In reviewing any plans, the Board of the Association may engage the services of architects, attorneys and engineers, and the reasonable cost of such services will be paid by the requesting party.

11.5 Exterior Changes; Signs and Advertising. Except for those improvements erected or installed by Declarant in its construction and completion of the Project, no exterior Improvements or additions to, alterations or decoration of the Building, including but not limited to any structural alterations to any Condominium Unit or Common Element, including any alteration or addition to any deck or terrace that could undermine or affect the structural integrity or drainage thereof, nor any changes in fences, hedges, walls, or other structures, nor installation of storm windows, storm or security doors, security bars, window- or roof-mounted air conditioning units, satellite dishes, any exterior television, radio, or other communication antennas of any type, or any other change or addition to the exterior of a Condominium Unit, nor placement of play or storage equipment outside of a Condominium Unit shall be commenced, erected, placed, or maintained, without the prior written approval of the Board of Directors of the Association.

Except as hereinafter provided, no signs, including for sale or for rent signs, advertisements, billboards, or unsightly objects of any kind shall be placed, erected, or permitted to remain in or on any Condominium Unit (including windows), nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Board of Directors of the Association. Nothing contained herein shall permit the Association to prohibit any displays of the American flag, a service flag, or a political sign by an Owner if such displays comply with the provisions of Section 38-33.3-106.5 of the Act, subject to reasonable rules and regulations that may be adopted by the Association as permitted by such Section of the Act.

11.6 Leases. The term “lease”, as used herein, shall include any agreement for the leasing or rental of a Condominium Unit. A Unit owned by a First Mortgagee shall not be subject to these restrictions for the period of ownership by a First Mortgagee but not thereafter. The Owner of a Condominium Unit shall have the right to lease its Condominium Unit under the following conditions:

- (a) All leases shall be in writing.
- (b) All leases shall provide that the terms of the lease and the lessee’s occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.
- (c) No lease shall be for a term of less than six (6) months.
- (d) The Association may adopt move-in and move-out rules and fees applicable to all lessees and Owners who rent their Condominium Unit to lessees.

11.7 Nuisances. No nuisance shall be allowed on the Project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. The Association may adopt rules and regulations addressing noise and other impacts of large gatherings and parties, noise from stereos, televisions, other electronic equipment and exercise equipment, and may require Owners to install carpeting and other improvements to mitigate the impact of noise from use of a Condominium Unit. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive, or unlawful use shall be permitted or made of the Project or any part thereof.

All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

11.8 Garbage Collection. Each Owner shall dispose of the garbage collected within such Owner's Condominium Unit into containers of such dimensions and at such locations as the Association shall from time to time designate.

11.9 Declarant's Rights to Construct or Alter Improvements. No provision of this Condominium Declaration shall be construed to prevent or limit Declarant's rights or require Declarant to obtain any consent from the Association or any Owner to construct or alter Improvements on any property within the Project; to maintain, and authorize others to maintain offices for sales purposes or similar facilities on any property owned by Declarant or owned by such other person, or owned by the Association within the Project; or to post signs and banners on Common Elements or do any other act or thing incidental to promotion, marketing, or sales of property within the boundaries of the Project. Nothing contained in this Condominium Declaration shall limit the right of Declarant or require Declarant to obtain approvals (including, without limitation, approval of the Association or any Owner): (a) to excavate, cut, fill, or grade any property within the Project or to construct, alter, demolish, or replace any Improvements on any property within the Project; (b) to use any structure on any property owned by Declarant as a construction, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Project; (c) to store construction materials, supplies, equipment, tools, waste or other items on property within the Project; or (d) to have tents, shacks, storage sheds or other temporary structures or buildings on property owned by Declarant. Nothing in this Condominium Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

11.10 Window Treatments, Furnishings. Window treatments such as curtains, shades, coverings, and others that are not visible from outside a Condominium Unit may be installed without the written approval of the Board of Directors of the Association as long as the Building standard shades remain in place. All window shades, coverings and curtains that are visible from outside a Condominium Unit shall be approved by the Board of Directors prior to installation. No furniture or furnishings may be placed adjacent to windows so as to be visible from the exterior of a Condominium Unit without the prior written approval of the Board of Directors of the Association. No furniture shall be placed within a Condominium Unit so that an unfinished rear side is visible to public view from outside the Condominium Unit.

11.11 Emergency Vehicle Parking. The Association shall allow Owners to park emergency vehicles in their Parking Space, provided that: (i) it is a condition of such Owner's employment that the vehicle is required to be available at designated periods at the Owner's residence; (ii) such vehicle has a weight rating of 10,000 lbs. or less; (iii) the Owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider; (iv) the vehicle has an official designation on it; and (v) the vehicle does not interfere with access by other Owners.

11.12 No Degradation of Acoustical Isolation Assemblies Between Units. The Building has been constructed with acoustical isolation assemblies (referred to herein as the "AIA") in the walls that separate Condominium Units. Owner shall not make any changes or modifications to the AIA whatsoever and shall not do anything within or adjacent to a Condominium Unit that degrades

the acoustical isolation features of the AIA or damages the AIA. If an Owner damages, degrades, modifies or changes the AIA in any manner, such Owner shall be responsible for all costs necessary to correct such damage, degradation, modification or change as may be necessary to restore the AIA to its original level of sound isolation. Such costs shall be included in Default Assessment assessed against such Owner and such Owner's Condominium Unit as provided in Section 7.10 above. **[CHECK IF THIS WILL BE INCLUDED IN THE CONSTRUCTION.]**

11.13 Additional Noise Mitigation Measures. The Board of Directors of the Association may require an Owner or occupant of a Unit to install carpeting and/or rugs or take other steps to reduce the level of noise emanating from such Unit in the event any other Owner or occupant of a Unit complains about excessive noise emanating from such Unit. The Board of Directors shall provide the Owner and/or occupant of the Unit about which an excessive noise complaint is made an opportunity to be heard by the Board of Directors prior to imposing any additional noise attenuation measures.

ARTICLE XII

EASEMENTS

12.1 **Recorded Easements.** In addition to all easements and rights-of-way of record at or before the recording of this Declaration, as described in Exhibit C attached hereto, the Property, and all portions thereof, shall be subject to the easements as shown on any recorded Condominium Map of the Property, or any portion thereof, and as shown on the recorded Condominium Map.

12.2 **Encroachments.** In the event that any portion of the Common Elements encroaches upon any Condominium Unit(s) or in the event that any portion of a Condominium Unit encroaches upon any other Condominium Unit(s) or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of the Building, or (ii) alteration or repair to the Common Elements or (iii) repair or restoration of any Condominium Unit after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the Condominium Units, the Building, or other improvements comprising the project are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances on either the Common Elements or the Condominium Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trusts, or other security instruments relating to the Condominium Units, the actual location of the Condominium Unit shall be deemed conclusively to be within the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of the Condominium Unit as indicated on the Condominium Map.

12.3 **Utility Easements.** There is hereby created a general easement upon, across, over, in and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electrical telecommunications,

and satellite or cable television. By virtue of this easement, it shall be expressly permissible and proper for the Declarant, the Association, and the companies providing electrical, telephone, cable television, telecommunications, and television services to the Building or otherwise, to erect and maintain the necessary poles and other necessary telephone, cable television and telecommunications wires, cables, circuits, conduits, equipment and apparatus on, above, across, through and under the roofs and walls of the Building and in attics and crawl spaces of Condominium Units. Notwithstanding anything to the contrary contained in this Section 12.3, no water, sewer, gas, telephone, electrical, satellite television, telecommunications or cable television lines, systems, or facilities may be installed or relocated on the Property except as approved by the Association. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, Declarant or the Association shall have, and hereby reserve, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof and each is hereby appointed the agent and attorney-in-fact of the Owners for such purpose; provided, however, that such power of the Declarant shall cease upon conveyance of the last Condominium Unit by Declarant to the first Owner thereof (other than Declarant). The easement provided for in this Section 12.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Property.

12.4 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

12.5 Maintenance and Construction Easements. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under any and all portions of the Property as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration. An easement is hereby granted to the Declarant, its officers, agents, employees and assigns upon, across, over, in and under any and all portions of the Property as may be necessary or appropriate to maintain, repair or replace any improvements pursuant to any warranty or agreement with any Owner.

12.6 Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

12.7 Easements of Access for Repair, Maintenance, and Emergencies. Some utilities may be located in a Condominium Unit or Parking Space ("Common Utilities") that serve one or more other Condominium Units or may be conveniently accessible only through other Condominium Units. The Owners of the Condominium Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Condominium Unit and Parking Space and to all Common Utilities from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Utilities located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Utilities or to any Condominium Unit or Parking Space. The Association shall also have such right, independent of any agency relationship. Subject to the provisions of Section 6.2 hereof, damage to the interior of any part of any Condominium Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Utilities at the instance of the

Association or any Owner, shall be an expense of the Association. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours notice to the occupants of the Condominium Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations the occupants of the affected Condominium Unit shall be warned of impending entry as early as is reasonably possible.

12.8 Remodeling Easement. Each Owner shall have an easement in, upon, under, and across the Common Elements for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Elements in connection with the improvement or alteration of his Condominium Unit that is approved by the Board. Each Owner shall further have an easement and right to repair, modify, and maintain any utility lines and pipes serving only such Owner's Condominium Unit (and therefore not a Common Element) that are located within another Owner's Condominium Unit. Prior to repairing or maintaining any such utility lines or pipes the Owner in whose Condominium Unit the lines or pipes are located will be given at least ten (10) days' prior notice of the repair or maintenance. If a Condominium Unit or any Common Elements are damaged or destroyed in connection with or as a result of any improvement or alteration performed by or for an Owner, such Owner shall repair, restore or replace all Common Elements and all improvements and personal property located in any other Condominium Units that are so damaged or destroyed. The Owner for whom any improvement or alteration work is performed hereby agrees to indemnify and hold harmless the Association and all other Owners from and against any and all damages, claims, costs, including attorneys fees, and expenses incurred by such other Owners as a result of the improvement or alteration of the Owner's Condominium Unit.

12.9 Declarant's Rights Incident to Completion of the Project. Declarant, for itself and its successors and assigns, shall have and hereby retains or is granted a right and easement of ingress and egress over, in, upon, under, and across the Common Elements and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to the completion of the Project, the sale of the Condominium Units, the exercise of Declarant's special rights under Section 11.9 above and the exercise of Declarant's development rights; provided, however, that no such rights shall be exercised in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of his Condominium Unit or the Common Elements. The rights under this Section shall terminate upon conveyance by a Declarant of all Condominium Units to Owners other than a Declarant or three (3) years after the recording of this Declaration, whichever occurs first.

12.10 Easements Deemed Created. All conveyances of Condominium Units hereafter made, whether by a Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, even though no specific reference to such easements or to this Condominium Declaration appears in the instrument for such conveyance.

12.11 Association Responsibility Under Easements. The Association is hereby authorized and directed to perform and observe the obligations of the Declarant, in its capacity as owner of the Property, under all easements described in Exhibit C that encumber the Property, from and after the date of recordation of this Declaration.

ARTICLE XIII

DAMAGE, DESTRUCTION, OBSOLESCENCE, OR CONDEMNATION

13.1 Association as Attorney-in-Fact. This Condominium Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of any Condominium Units, Building, Common Elements or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is hereinafter provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its construction, damage, obsolescence or condemnation, shall be appointed. Such appointment must be approved by the Owners holding at least sixty-seven percent (67%) of the votes in the Association and at least sixty-seven (67%) of the First Mortgagees of Condominium Units based upon one vote for each First Mortgage held.

13.2 Damage or Destruction. "Repair and reconstruction" of the improvements, as used in the succeeding subsections, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Condominium Unit, Common Element, and Limited Common Element having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration, or replacement, in accordance with the provisions hereinafter set forth:

(a) Notwithstanding the provisions of Article XVI hereof relating to the percentage required for consent or approval of Owners and First Mortgagees, in the event of damage or destruction due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such repair and reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and construction.

(b) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special

assessment which, notwithstanding anything to the contrary contained in Section 7.6 hereof, shall be made without a vote of the Owners against all of the Owners and their Condominium Units. Such special assessment shall be assessed in accordance with the provisions of Section 7.6 hereof, and shall be due and payable not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s), using all of the insurance proceeds for such purpose, notwithstanding failure of an Owner to pay the aforesaid special assessment. The special assessment provided for herein shall be a debt of each Owner and a lien on its Condominium Unit, and may be enforced and collected as provided in Section 7.10 hereof, including the provisions therein pertaining to the payment of interest, late charges, costs, attorneys' fees and expenses. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

(c) Notwithstanding subsection (b) of this Section 13.2 and subject to the approval of at least sixty-seven percent (67%) of the Owners and at least sixty-seven percent (67%) of First Mortgagees and insurers and guarantors of First Mortgages (based on one vote for each First Mortgage held), if applicable, if the insurance proceeds are not sufficient to repair and reconstruct the improvements, the Board of Directors may determine that the improvements will not be repaired or reconstructed; in such event, the Association shall forthwith record a notice in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Articles of Incorporation and By-Laws of the Association. Assessments for common expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, combined with all sale proceeds and all such proceeds shall be divided into portions by the Association, each portion representing one Condominium Unit, with the amount of each portion to be allocated to each Condominium Unit by the Board of Directors of the Association based on the prorated fair market value of the Condominium Units as they existed immediately prior to the damage and destruction, based upon appraisals of the Property prepared by an appraiser certified by the MAI or the reasonable equivalent of such certification. The appraisals shall be distributed to the Owners and shall become final unless, within thirty (30) days after distribution, disapproved by Owners of Condominium Units to which at least fifty percent (50%) of the votes in the Association were allocated. Each Owner's prorated share of the proceeds shall be determined by dividing the fair market value of such Owner's Condominium Unit by the fair market value of all of the Condominium Units. In the event the Condominium Units cannot be appraised because of the amount of damage or destruction, each Owner's prorated share of the proceeds shall be based upon each Condominium Unit's Assessment Percentage.

Such divided proceeds shall be paid into separate accounts. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner(s) and First Mortgagees thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the payment of the liens encumbering the Condominium Unit represented by such separate account, as follows:

- assessing entity;
- (i) For payment of taxes and special assessment liens in favor of any
 - (ii) For payment of the lien of any First Mortgage;
 - (iii) For payment of unpaid Association common expense assessments, other assessments, charges and fees, and all costs, expenses and fees incurred by the Association;
 - (iv) For payment of the customary expenses of sale;
 - (v) For payment of junior liens and encumbrances in the order of and to the extent of their priority;
 - (vi) For payment to creditors of the Association; and
 - (vii) The balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

13.3 Obsolescence.

(a) The Owners representing an aggregate ownership interest of sixty-seven percent (67%) of the Condominium Units may agree that the Building is obsolete and adopt a plan for the renewal and reconstruction thereof. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded in the City and County of Denver, State of Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid common expense assessment for the renewal and reconstruction of the Building shall be a debt of each Owner and a lien on its Condominium Unit that may be enforced and collected as provided in Section 7.9 hereof.

(b) Subject to the provisions of Article XVI for approval or consent of Owners, First Mortgagees, insurers and guarantors of First Mortgages, if applicable, the Owners may agree that the Condominium Units are obsolete and that the same should be sold. In such instance, the Association shall forthwith record in the Office of the Clerk and Recorder for the City and County of Denver, State of Colorado, a notice setting forth such facts, and upon the recordation of such notice executed by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Articles of Incorporation and By-Laws of the Association. The sale proceeds shall be paid into separate accounts, each such account representing a Condominium Unit as more fully provided in Section 13.2(c) hereof. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner(s) thereof. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, for the same purposes and in the same order as provided in Section 13.2(c) hereof.

13.4 Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned

by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 13.4 shall apply:

(a) All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award," shall be payable to the Association.

(b) In the event that the entire Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership created pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners by the Board of Directors of the Association in accordance with the procedure set forth in Section 13.2(c) hereof; provided, however, that if a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 13.2(c) hereof.

(d) Subject to the provisions of Article XVI hereof relating to the approval of Owners, First Mortgagees, insurers and guarantors of First Mortgages, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership created hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: as soon as practicable, subject to the following sentence, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners in accordance with the undivided interest in the Common Elements appurtenant to each Condominium Unit; (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Condominium Unit, including but not limited to the Limited Common Elements appurtenant thereto, and to the improvements an Owner has made within his Condominium Unit, shall be apportioned to the particular Condominium Unit involved, and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined judicial decree. Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Condominium Unit shall be based on the comparative values of the affected Condominium Units as they existed immediately prior to the condemnation, using the appraisal procedures described in Section 13.2(c) hereof. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 13.2(c) hereof.

(e) Subject to the provisions of Article XVI hereof relating to the percentages required for approval or consent of Owners, First Mortgagees, and insurers and guarantors of First Mortgages, if applicable, in the event a partial taking results in the taking of a complete Condominium Unit, the Owner(s) thereof shall automatically cease to be member(s) of the

Association shall cease to hold any right, title or interest in the remaining Common Elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the assessment percentages so that each Condominium Unit remaining subject to this Condominium Declaration shares the assessments equally and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Condominium Units for amendment of this Condominium Declaration as provided in Articles XV and XVI hereof. The Condemnation Award as to each such completely taken Condominium Unit shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 13.2(c) hereof, except that creditors of the Association shall not receive any share of the proceeds.

(e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures of Section 13.2 hereof.

13.5 Termination of Project.

(a) The Project shall continue indefinitely unless and until it is terminated by the taking of all of the Condominium Units by eminent domain or by agreement of the Owners holding at least sixty-seven percent (67%) of the votes in the Association and Eligible First Mortgagees holding sixty-seven percent (67%) of the First Mortgages (based on one vote for each First Mortgage held). The agreement of the Owners and Eligible First Mortgagees to terminate must be evidenced either by their execution of a Termination Agreement (or a ratification thereof) in the same manner as a deed, by the requisite number of Owners and Eligible First Mortgagees, or by the certificate of the Secretary of the Association as provided in Section 15.2, in lieu of the signature of each consenting Owner and Eligible First Mortgagee. The Termination Agreement must specify a date after which the Agreement will be void unless it is recorded before that date. The Termination Agreement may provide that all of the Common Elements, and Condominium Units must be sold following termination and the minimum terms of sale for any of the Real Estate to be sold following termination. If any of the Real Estate is to be sold following termination, title to that Real Estate, upon termination, vests in the Association as trustee for the holders of all of the interests in the Condominium Units. The Termination Agreement and all ratifications thereof must be recorded with the Clerk and Recorder of the City and County of Denver, State of Colorado, and is effective only upon recordation. After the recording of the Termination Agreement, the Project will be sold and the Association, on behalf of the Owners, may contract for such sale, but the contract is not binding on the Owners unless approved by the same vote of Owners and Eligible First Mortgagees required for approval of the Termination Agreement. After approval of the sale, the Association has all power necessary and appropriate to effect the sale, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Articles of Incorporation and By-Laws of the Association and, until the sale has concluded and the proceeds have been distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to the Owners and lienholders as their interest may appear, in accordance the provisions set forth below, taking into account the value of property owned or distributed that is not sold so as to preserve the proportionate interests of each Owner with respect to all property cumulatively. Unless otherwise specified in the Termination Agreement, until title to the Project has been transferred pursuant to a sale, each Owner and its successors in interest have an exclusive right to occupancy of a portion of the real estate that formally constituted the Condominium Unit. During the period of that occupancy, each Owner and the Owner's successors in interest remain liable for all Assessments and other obligations imposed upon the Owners by the

Common Interest Act or this Declaration. Following termination of the Project, the proceeds of any sale of real estate, together with any insurance proceeds (if the termination occurs in connection with a damage or destruction) and the assets of the Association are held by the Association as trustee for the Owners and the holders of liens on the Condominium Units and Parking Spaces as their interest may appear.

(b) The respective interest of the Owners is as follows:

(i) except as provided in subparagraph (ii) below, the respective interests of the Owners are the fair market values of their Condominium Units, interest in the General Common Elements, and any Limited Common Elements before termination, as determined by one or more independent MAI appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within thirty (30) days after distribution by Owners holding at least fifty percent (50%) of the total votes in the Association. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Condominium Unit by the total fair market value of all Condominium Units;

(ii) if any Condominium Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Owners are their respective undivided interests in the Common Elements for each Condominium Unit immediately before termination.

(c) The proceeds available for distribution to the holders of interests in the Condominium Units after a termination shall be allocated to each Condominium Unit in accordance with its proportionate interest as provided above and each Condominium Unit's share of such proceeds shall be deposited into a separate account identified by the Condominium Unit designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of the liens encumbering the Condominium Unit represented by such separate account, in the following order: (a) for the payment of taxes and special assessment liens in favor of any governmental assessing entity; (b) for the payment of any Association Assessments which take priority over the lien of a First Mortgage pursuant to this Condominium Declaration and the Common Interest Act; (c) for the payment of the lien of any First Mortgage; (d) for the payment of unpaid Association Assessments, charges and fees, and all costs, expenses, and fees incurred by the Association, including customary expenses of sale; (e) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (f) the balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

(d) Title to any Condominium Units not to be sold following termination shall vest in the Owners upon termination as tenants-in-common in fractional interests that maintain, after taking into account the fair market value of the property owned and the proceeds of property sold, their respective interests as provided in subsection 13.5(b) above with respect to all property appraised under said subsection, and liens on the Condominium Units shall shift accordingly. While the tenancy-in-common exists, each Owner and his successors-in-interest shall have the exclusive right to occupancy of the portion of the Real Estate that formerly constituted such Owner's Condominium Unit prior to termination.

ARTICLE XIV

BURDENS AND BENEFITS OF DECLARATION

14.1 Covenants Running With Property. The benefits, burdens and all other provisions contained in this Condominium Declaration shall be covenants running with and binding upon the Property.

14.2 Binding Upon and Inure to the Successors. The benefits, burdens and all other provisions contained in this Condominium Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Condominium Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity.

ARTICLE XV

AMENDMENT OF DECLARATION

15.1 Amendment. Except for those matters governed by Section 16.1 hereof, the provisions of this Condominium Declaration may be amended, in whole or in part, at any time and from time to time, by instrument approved in writing by the Owners holding not less than sixty-seven percent (67%) of the total allocated votes in the Association; provided, however, that no amendment shall adversely affect the Declarant's rights hereunder or amend this Section 15.1 without the prior written consent of Declarant as long as Declarant owns a Condominium Unit.

15.2 Recording of Amendments. To be effective, all amendments to this Condominium Declaration must be recorded in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties. The Secretary of the Association may certify on the amendment that the amendment has received the approval of the requested number of Owners and First Mortgagees in lieu of affixing the signatures of such Owners and First Mortgagees, provided that the President of the Association has executed such amendment.

15.3 Presumption of Validity. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one year after the amendment is recorded. There will be a presumption subsequent to the recording of an amendment to this Condominium Declaration that all votes and approvals required to pass the same pursuant to this Condominium Declaration were duly obtained (at a duly called meeting of the Association, in the case of votes). Such presumption may be rebutted by an action commenced within one year from the date the amendment is recorded. In the absence of any such action, such presumption will be deemed conclusive.

ARTICLE XVI

FIRST MORTGAGEES

16.1 Member and First Mortgagee Approval. Notwithstanding any other provisions of this Condominium Declaration to the contrary, the Association shall not:

(a) Unless it has obtained the prior written consent of the Members holding at least sixty-seven percent (67%) of the total allocated votes in the Association and the consent of sixty-seven percent (67%) of the First Mortgagees of Condominium Units (based on one vote for each First Mortgage held):

(i) seek to abandon or terminate the Project, whether by act or omission, except:

(A) for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or

(B) in the case of a taking by condemnation or eminent domain, in which event the provisions of Section 13.4 of this Condominium Declaration shall control, or

(C) for amendments to this Declaration, the Articles, or By-Laws of the Association made as a result of destruction, damage, or condemnation of the Real Estate or improvements thereon.

(ii) except as permitted by Sections 13.4 and 13.5 herein, change the pro rata interest or obligations of any individual Condominium Unit for the purpose of:

(A) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(B) determining the pro rata share of ownership of each Condominium Unit in the Common Elements.

(iii) except in accordance with Section 7.6 above and any greater than sixty-seven percent (67%) voting requirements for Owners as set forth in Section 38-33.3-312 of the Act, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project);

(iv) partition or subdivide any Condominium Unit;

(v) use hazard insurance proceeds for losses to any part of the Project (whether to Condominium Units or Common Elements) for other than the repair, replacement, or reconstruction of such condominium property in accordance with the procedures set forth in Sections 13.2 and 13.5 hereof, except as may be provided by statute in the case of substantial loss to such Condominium Units and/or Common Elements.

(vi) Unless it has obtained the prior written consent of Members holding at least sixty-seven percent (67%) of the total allocated votes in the Association, and sixty-seven (67%) of the Eligible First Mortgagees (based upon one vote for each First Mortgage owned), add or amend any material provisions of this Declaration, the Articles, or By-Laws of the Association which establish, provide for, govern, or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

- (A) voting rights;
- (B) increases in Assessments that raise the previously-assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- (C) reductions in reserves for maintenance, repair, and replacement of the Common Elements;
- (D) responsibility for maintenance and repair of any portion of the Project;
- (E) reallocation of interests in the Common Elements, or rights to use of the Common Elements, except as contemplated under Section 13.4 hereof;
- (F) other than the partitioning or subdivision of any Condominium Unit as provided in Section 16.1(a)(iv) above, redefinition of the boundaries of any Condominium Unit;
- (G) convertibility of Condominium Units into Common Elements or of Common Elements into Condominium Units;
- (H) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (I) insurance, including, but not limited to, fidelity bonds;
- (J) imposition of any restrictions on leasing of Condominium Units;
- (K) imposition of any restriction on the right of any Owner to use his Condominium Unit or the Common Elements or to sell or transfer his Condominium Unit;
- (L) any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Condominium Declaration or by any Eligible First Mortgagee or any insurer or guarantor of a First Mortgage;

(M) any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles, and By-Laws of the Association;

(N) any action to terminate the legal status of the Project; or

(O) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages.

16.2 Notice of Action. Upon written request therefor to the Association, stating both its name and address and the Condominium Unit number on which it holds (or insures or guarantees) a First Mortgage, a First Mortgagee, insurer or guarantor of a First Mortgage which has submitted such written request (referred to herein as an “Eligible First Mortgagee”) shall be entitled to timely written notice of:

(a) Any condemnation loss or casualty loss which affects either a material portion of the Project or any Condominium Unit subject to a First Mortgage held, insured or guaranteed by such Eligible First Mortgagee, insurer or guarantor of a First Mortgage;

(b) Any delinquency in the payment of Assessments or charges owed to the Association by the Owner of the Condominium Unit subject to a First Mortgage held, insured, or guaranteed by such Eligible First Mortgagee, insurer, or guarantor, or any default by such Owner in any obligation under the Declaration, Articles, or By-Laws of the Association if the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as provided in this Article XVI.

16.3 Notice of Objection. Unless an Eligible First Mortgagee or an insurer or guarantor of a First Mortgagee entitled to consent to certain amendments or actions as provided in this Article XVI provides the Secretary of the Association with written notice of its objection, if any, to the proposed amendment or action within sixty (60) days after it is given notice of the proposal by certified or registered mail, return receipt requested, the Eligible First Mortgagee or other party will be deemed conclusively to have approved of the proposed amendment or action and the Secretary of the Association may so state in any document. Notice also shall be published in a local newspaper at least two times, with at least one week between such notices.

16.4 Limitations on Approval Rights. No requirement stated in this Article to obtain the approval of an Eligible First Mortgagee may operate to:

(a) Deny or delegate control over the general administrative affairs of the Association by the Owners or the Board; or

(b) Prevent the Association or the Board from commencing, intervening in or settling any solicitation or proceeding; or

(c) Prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds pursuant to Section 38-33.3-313 of the Act.

ARTICLE XVII

DECLARATION

17.1 **Property Subject to Declaration.** Declarant hereby declares that the Property is and shall be subject in all requirements to the provisions of the Declaration, other than those provisions that are expressly limited to other property. Owners must comply with all applicable provisions of the Declaration, including the payment of assessments pursuant to the Declaration. In the event of any conflicts between the provisions of this Condominium Declaration and the provisions of the Declaration, the provisions of this Condominium Declaration shall control with respect to the Property subject to this Condominium Declaration.

17.2 **Designation of Owners on Owners Association Board.** Owners of Condominium Units are entitled to representation on the Owners Association Board in accordance with the Articles of Incorporation and Bylaws of the Owners Association.

ARTICLE XVIII

MISCELLANEOUS

18.1 **Period of Condominium Ownership.** The condominium ownership created by this Condominium Declaration and the Condominium Map shall continue until this Condominium Declaration is terminated in any manner provided in this Condominium Declaration or by law.

18.2 **Conveyance of Condominium Units.** All Condominium Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

18.3 **Enforcement.** Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violation or to recover damages, or both, and the Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, but shall be subject to the following requirements where applicable.

Notwithstanding any other provisions of this Declaration, the Articles of Incorporation, or the Bylaws to the contrary, any action or arbitration brought by the Association in which it seeks to recover an unspecified amount of damages or damages in excess of \$25,000.00, and any action or

arbitration that the Association seeks to bring on behalf of two or more Owners or as a class action, shall first be approved by the vote of the Members holding at least seventy-five percent (75%) of the voting power of the Association and the votes of at least seventy-five percent (75%) of the First Mortgagees, with one vote allocated for each First Mortgage held by a First Mortgagee. All costs and fees to be incurred in connection with such action shall be described in a budget which is approved by the vote of Members holding at least seventy-five percent (75%) of the voting power of the Association and seventy-five percent (75%) of the First Mortgagees at the same time as the required vote of the Members is obtained to bring the action or arbitration. Any expenditures in excess of such approved budget shall be approved as an amendment to the budget which is approved by the same percentage vote of the Members. The proposed litigation budget and a summary of the claims to be asserted in the action shall be mailed to all of the Members with a notice of the meeting describing the purpose of the meeting at least thirty (30) days prior to the date of the meeting. The costs and fees incurred in connection with such action shall be assessed against all of the Owners, other than the Owner against whom any such action is proposed, as a Special Assessment. Such costs and fees shall not be paid from Monthly Assessments. The Association may not bring an action for breach of warranty or other claims that do not arise out of a violation of the provisions of this Declaration. The foregoing requirements shall not apply to any action brought by the Association to collect assessments from Members or to obtain injunctive relief in connection with a violation of the provisions of this Declaration, whether or not the Association seeks to recover its costs of suit and attorneys' fees.

Any action, including arbitration pursuant to Section 18.11 below, brought by the Association on behalf of itself or any Owners with respect to alleged construction defects in the Common Elements or any Condominium Units shall be brought within one (1) year after recordation of this Declaration.

In the event the Board of Directors of the Association intends to bring an action asserting defects in the construction of five or more Condominium Units, the Board shall comply with the requirements of Sections 13-20-802 through 807 and 38-33.3-303.5, C.R.S., as amended, in addition to complying with the foregoing requirements.

18.4 Registration of Mailing Address. Each Owner, First Mortgagee, insurer and guarantor of a First Mortgage, shall register its mailing address with the Association, and notices or demands intended to be served upon any Owner, First Mortgagee, insurer or guarantor of a First Mortgage shall be delivered by messenger or sent by mail, postage prepaid, addressed in the name of such person or entity at such registered address.

18.5 Non-Waiver. Failure by the Declarant, the Association, any Owner, First Mortgagee, or other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Condominium Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

18.6 Severability. The provisions of this Condominium Declaration shall be deemed to be independent and severable, and the invalidation of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

18.7 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

18.8 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Condominium Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Condominium Declaration or the intent of any provision hereof.

18.9 Conflicts in Documents. In case of any conflict between this Condominium Declaration and the Articles of Incorporation or By-Laws of the Association, this Condominium Declaration shall control. In case of any conflict between the Articles of Incorporation and By-Laws of the Association, the Articles of Incorporation shall control.

18.10 Counterparts. This Declaration, and any amendments hereto, may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. In the event that any such document is executed in counterparts, those pages from the counterparts on which signatures and/or certificates of notaries public appear may be attached to the original instrument for the recordation thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical.

18.11 Arbitration. Any dispute between the Association and the Declarant, between any Owner and the Declarant, or between the Association and any Owner with respect to a matter other than delinquent assessments, shall be submitted to arbitration in Denver, Colorado, before a panel of three arbitrators, under the supervision, rules and procedures of the American Arbitration Association then in effect, as modified herein. The Association shall comply with the provisions of Section 18.3 above if applicable to the subject matter of the arbitration. Discovery in such arbitration will be conducted in accordance with the Colorado Rules of Civil Procedure, except that all discovery must be completed within 180 days of the selection of the arbitrators. If the parties to the dispute are unable to agree upon the selection of three arbitrators, then the AAA will select and implement a method of selecting the arbitrators. The decision of the arbitrators in such cases will be final and binding. The cost of the arbitration proceedings, including the reasonable attorney's fees and expenses of the parties, will be paid by the party(ies) which is not or are not the substantially prevailing party(ies) in the arbitration proceedings (in equal shares if there are more than one such non-prevailing parties). In any arbitration hereunder, the arbitrators will determine, in addition to any matters submitted by the parties, which party(ies) is or are the substantially prevailing party(ies). The prevailing party(ies) will be the party(ies) who prevail(s) on substantially more of the matters submitted to arbitration (including, without limitation, claims, defenses, remedies and amount of damages sought) than any of the other parties to the arbitration.

EXHIBIT A
TO
CONDOMINIUM DECLARATION
FOR
THE AYR LOFTS
Legal Description

City and County of Denver, State of Colorado.

EXHIBIT B
TO
CONDOMINIUM DECLARATION
FOR
THE AYR LOFTS

Assessment Percentages

Condominium
Unit No.

Square Footage

Assessment
Percentage

EXHIBIT C

RECORDED EASEMENTS, LICENSES, AND OTHER DOCUMENTS

EXHIBIT D
TO
CONDOMINIUM DECLARATION
FOR
THE AYR LOFTS

Common Elements to be Maintained
by Owners Association